

Application No.: 10/803,153
Amendment and Response dated December 18, 2007
Reply to Office Action of June 19, 2007
Docket No.: 760-243 CON II/RCE
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Remarks/Arguments:

Introduction

Claim 1 has been amended to include, *inter alia*, the limitations of claim 3. Claim 3 has been canceled. Claims 1, 4, 9, 11, 17 and 17 have been amended to include, *inter alia*, the limitation that one thin wall graft member completely overlaps another thin wall graft member. Support for these amendments may be found in the specification at page 9, lines 2-4. Claims 9 and 11 have been amended to describe a "desired amount" of support. Claims 10 and 12 have been amended for antecedent basis.

No new matter is introduced with these claim amendments. Entry of the claim amendments is respectfully requested.

Section 112 Rejections

Claims 9-13 were rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking support in the specification. Claims 9 and 11 have been amended to describe a "desired amount" of support, as fully supported by the specification. Reconsideration and withdrawal of the section 112 rejections are respectfully requested.

Double Patenting Rejections

Claims 1 and 4-18 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-22 of U.S. Patent No. 6,331,191 to Chobotov. Applicants respectfully submit that with the amendments made to the claims herein, the double patenting rejection should be withdrawn. If, however, the examiner maintains the double patenting rejection, Applicant is willing to file a terminal disclaimer upon indication of allowable subject matter pursuant to 35 U.S.C §§ 102, 103 & 112 considerations.

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Section 102/103 Rejections

Claims 1 and 4-18 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,123,722 to Fogarty et al. (hereinafter "Fogarty") and/or under 35 U.S.C. §102(a) as allegedly being unpatentable Fogarty. Applicant respectfully traverses.

The graft modules of Fogarty are deployed in a slightly overlapping manner to provide a deployed modular graft capable of supporting a bodily lumen. (See, e.g., Fogarty, Fig. 3). Fogarty, however, fails to disclose, teach or suggest that its graft modules may be completely overlapped in the deployed state. Any attempt to modify the teachings of Fogarty to suggest its graft modules may be completely overlapped is hindsight reconstruction. It is well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Applicants' disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993).

Thus, Fogarty fails to disclose, teach or suggest the claimed features of independent claims 1, 9, 11, 14 and 17 of the subject application. Reconsideration and withdrawal of the rejections of independent claims 1, 9, 11, 14 and 17, and all claims dependent therefrom, are respectfully requested.

Summary

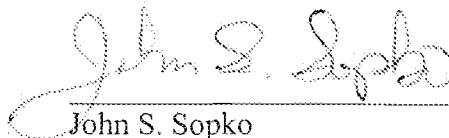
Therefore, Applicants respectfully submit that independent claims 1, 9, 11, 14 and 17, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

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The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John S. Sopko", is written over a horizontal line.

John S. Sopko

Registration No.: 41,321

Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700